IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

ROBERT ALAN MADDEN,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Case No. CIV-16-566-F
	)	
CLEVELAND COUNTY, et al.,	)	
	)	
Defendants.	)	

ORDER

On July 11, 2016, United States Magistrate Judge Gary M. Purcell issued a Report and Recommendation (doc. no. 7), wherein he recommended that (1) plaintiff's claims against defendants "Cleveland County DA," "Judge Stice," "State of Oklahoma," and "Cleveland County" seeking the dismissal of pending state criminal charges be dismissed without prejudice on the bases of failure to exhaust state remedies and abstention; (2) plaintiff's claims against defendants "Cleveland County DA" and "Judge Stice" should be dismissed with prejudice pursuant to 28 U.S.C. §§ 1915A and 1915(e)(2)(B) on the ground of absolute immunity; and (3) plaintiff's claims against defendants "Inovative Plumbing Design" and "Andy and Son's Servies" should be dismissed with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim upon which relief may be granted. Magistrate Judge Purcell further recommended that the dismissal of the cause of action count as one "prior occasion" or "strike" pursuant to 28 U.S.C. § 1915(g).

Presently before the court is plaintiff's timely objection to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1), the court has conducted a de novo review of the matter. Having done so, the court concurs with the analysis

of Magistrate Judge Purcell. The court finds plaintiff's objection to be without merit. Consequently, the court accepts, adopts and affirms the Report and Recommendation.

In addition, to the extent plaintiff may be alleging a claim under Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), the court finds that he has failed to state a claim for relief and any such claim should be dismissed for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B). Bivens established that an individual has a cause of action against a federal official in his individual capacity for damages arising out of the official's violation of the United States Constitution under color of federal law or authority. Dry v. U.S., 235 F.3d 1249, 1255 (10th Cir. 2000) (citing Applewhite v. U.S. Air Force, 995 F.2d 997, 999 n. 8 (10th Cir. 1993)). Plaintiff has not alleged any facts in his complaint to support a claim under Bivens.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Gary M. Purcell on July 11, 2016 (doc. no. 7) is **ACCEPTED**, **ADOPTED** and **AFFIRMED**. Plaintiff's claims against defendants "Cleveland County DA," "Judge Stice," "State of Oklahoma," and "Cleveland County" seeking the dismissal of pending state criminal charges are **DISMISSED WITHOUT PREJUDICE** on the bases of failure to exhaust state remedies and abstention. Plaintiff's 42 U.S.C. § 1983 claims against defendants "Cleveland County DA" and "Judge Stice" are **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. §§ 1915A and 1915(e)(2)(B) on the ground of absolute immunity. Plaintiff's 42 U.S.C. § 1983 claims against defendants "Inovative Plumbing Design" and "Andy and Son's Servies" are **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim upon which relief may be granted. Any claim alleged under Bivens v. Six Unknown Named Agents of Fed. Bureau of

Narcotics, 403 U.S. 388 (1971), is also **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim upon which relief may be granted. The dismissal of plaintiff's cause of action counts as one "prior occasion" or "strike" pursuant to 28 U.S.C. § 1915(g).

DATED July 19, 2016.

STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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